

**DEC 12 2005****CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

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**UNITED STATES OF AMERICA,****Plaintiff - Appellee,****v.****PABLO MADRIGAL ZEPEDA,****Defendant - Appellant.**

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**No. 04-30338****D.C. No. CR-03-02105-RHW****MEMORANDUM\***

**Appeal from the United States District Court  
for the Eastern District of Washington  
Robert H. Whaley, District Judge, Presiding**

**Submitted December 5, 2005\*\***

**Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.**

Pablo Madrigal Zepeda appeals the sentence imposed following a guilty plea conviction for conspiracy to distribute a controlled substance, methamphetamine, in violation of 21 U.S.C. § 846. We have jurisdiction pursuant to 28 U.S.C. § 1291.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Because Zepeda was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 915-16 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to cases involving non-constitutional *United States v. Booker*, 543 U.S. 220 (2005) error).

**REMANDED.**